BEFORE THE

TENNESSEE DEPARTMENT OF EDUCATION

IN THE MATTER OF:	)	
J. L. B.	)	
	)	
v.	)	**No. 00-34**
	)	
WILSON COUNTY BOARD OF EDUCATION	)	

FINAL ORDER

This dispute arose when the parent objected to the educational placement for her son decided upon by the Individualized Educational Program (IEP) Team on April 4, 2000. The matter was initially assigned for a due process hearing in May 2000.

Shortly after requesting a hearing and before a hearing could be convened, the parties began working with one another toward a mutually agreeable resolution as to the proper placement for the student. The parties have since resolved the matter of the student's placement and both parties agree that his current placement in the regular education setting is proper and that the student is progressing very well with his education.

The only issue unresolved is the designation of the prevailing party. While there was no formal hearing convened, there have been telephone conferences between the court and the attorneys for the parties. The parties agreed that it would be mutually beneficial to submit the issue of the prevailing party to the court on briefs rather than incur the additional time and expense of a formal hearing. After reviewing the briefs and listening to argument of counsel, the court finds:

FACTS

In May 2000, the parent filed a request for a due process hearing on behalf of her son. The mother initially requested that this court order her son placed in a private facility at the expense of the Wilson County School System. The student had been certified as eligible for special education services due to language impairment, hearing impairment, speech impairment, and learning disabled due to attention deficit-hyperactivity disorder (ADHD).

On June 8, 2000, the student's attorney, Paula Flowers, notified the court by letter that the parties had agreed to certain evaluations and requested that the court waive the rule requiring a hearing and decision within 45 days.

The parties continued working to resolve the matter of the appropriate placement for the student and, on April 4, 2001, the court entered an Interim Order memorializing the parties' decision to transfer the student to Central High School.

The mother had objected to the placement recommendation of the team convened to design the student's individualized educational program (IEP) on April 4, 2000. The mother maintained that the proper placement for her son would be in a private facility.

After the team had met and before the mother filed for a due process hearing, Debra Anderson, a school psychologist, met with the mother and suggested that the student be placed in the MAP Academy. (Affidavit of Debra Anderson). The mother vigorously opposed this suggested placement. *Id.*

In October 2000, specific behavioral problems necessitated a transfer to the MAP Academy. (Parent's Brief). The mother maintains that a transfer to the MAP facility was the only option, short of suspension or expulsion, offered at the October 2000 IEP Team meeting.

During the telephone conference with the Court on November 1, 2001, all parties agreed

that the student had thrived at the MAP Academy. They agreed that the educational benefits he had received from MAP had allowed for his current placement in the regular education setting.

CONCLUSIONS OF LAW

To qualify for an award of attorney fees a parent or guardian who has filed for a due process hearing must achieve the status of the prevailing party. *Texas State Teachers Ass'n v. Garland Indep. School Dist.*, 489 U.S. 782, 789, 109 S.Ct.1486, 1492, 103 L.Ed.2d 866 (1989). To be considered a prevailing party a plaintiff must be able to point to a resolution of the dispute between then which changes their legal relationship under the Individuals with Disabilities Education Act (IDEA). *Id.* at 489 U.s. 792-93, 109 S.Ct. 1493.

In this federal circuit, a parent or guardian need not receive actual judicial relief in the form of an order to qualify as a prevailing party. *Wooldridge v. Marlene Industries,* 898 F.2D 1169, 1173 (6TH Cir. 1990). A parent or guardian prevails when the lawsuit or request for due process hearing produces voluntary action on the part of the school system that affords the parent or guardian some or all of the relief sought through due process. *Id.* at 1173-74, (quoting *Hewitt v. Helms,* 482 U.S. 755, 760-61, 107 S.Ct. 2672, 2676, 96 L.Ed.2d 654 (1987).

Plaintiff cites the court to *Payne v. Board of Education, Cleveland City Schools.* 88 F.3d 392 (6th Cir. 1996) for her theory that she may qualify as the prevailing party under the "catalyst theory" even though she received no direct relief in the form of an order. Plaintiff is correct that she can achieve prevailing party status by showing the request for due process and the subsequent conferences and proceedings acted as a catalyst in bringing us to the present successful educational placement. *Id.* at p.397.

The facts of this case, however, do not support a finding that plaintiff is the prevailing party. The court finds plaintiff is not the prevailing party and bases its conclusion on *either* of

the following findings:

1. *Plaintiff did not receive any of the relief she sought.* Plaintiff's initial dispute over placement centered on her contention that the student's needs to be schooled in a private educational setting. Plaintiff, in her request for a due process hearing, sought "...placement at Benton Hall..." and payment for prior attendance at a Sylvan Learning Center. Neither of these conditions is part of the current satisfactory educational setting. Nor, based on the record, does the court find that private services led to the current placement.

2. *The due process hearing request was not the catalyst for this successful outcome.* Based on the record. the court finds that the placement at the MAP Academy was the direct and proximate cause of the student's remarkable progress. The court also finds that it was the student's misconduct that acted as the catalyst that set this fortuitous chain of events in motion. It was not a result of due process.

The plaintiff's reliance on *Payne* is misplaced. The facts in this case are indeed analogous to those in *Payne* and the *Payne* Court held that the plaintiff had not shown that the changes made by the school system were the result of the due process request. The facts of this case support a similar finding.

The court finds that the school system is the prevailing party.

This decision is binding on both parties unless the decision is appealed. Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee, or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty days of entry of a final order in a non-reimbursement case or three years in cases involving educational cost and expenses. In appropriate cases the reviewing court may stay this final order.

IT IS SO ORDERED THIS 7th DAY OF DECEMBER, 2001.

A. JAMES ANDREWS
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing FINAL ORDER has been sent by first class mail this 10th day of December 2001 to the following:

ATTORNEY FOR THE PLAINTIFF: Paula A. Flowers, Waller Lansden Dortch and Davis, PLLC, 511 Union Street, Suite 2100, P.O. Box 198966, Nashville, Tennessee 37219.

ATTORNEY FOR WILSON COUNTY: Michael Jennings, 326 North Cumberland Street, Lebanon, TN 37402-2502.

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